IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 34607 of 2005(T)

AGAINST THE ORDER DATED / / IN CMP 689/2005 IN MC.435/2005 of FAMILY COURT, KOTTARAKKARA

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PETITIONER:

ABY JOHN, AGED 31 YEARS, S/O.JOHN,
D/C BUILDINGS, EDAMULACKAL VILLAGE,
AYOOR P.O., PATHANAPURAM TALUK.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. SHERLY, D/O.THOMAS,
CHARUVILAPUTHEN VEEDU, KARIKKOM P.O.,
MELILA VILLAGE, KOTTARAKKARA TALUK.

2. AALYA, AGED 7 MONTHS(MINOR),
CHARUVILAPUTHEN VEEDU, KARIKKOM P.O.,
MELILA VILLAGE, KOTTARAKKARA TALUK,
REPRESENTED BY MOTHER THE FIRST RESPONDENT.

BY ADV. SRI.LEGY ABRAHAM
SRI.C.N.SIVANKUTTY
GOVERNMENT PLEADER SRI.K.A.AKBAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.34607 OF 2005

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE PETITION, M.C.NO.435 OF 2005 DATED 6/5/2005 FILED BY THE SECOND RESPONDENT BEFORE THE FAMILY COURT, KOTTARAKKARA.

EXT.P2:- TRUE COPY OF THE OBJECTION DATED 13/10/2005 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, KOTTARAKKARA IN M.C.NO.435 OF 2005.

EXT.P3:- TRUE COPY OF THE PETITION DATED 13-10-2005 FILED BY THE SECOND RESPONDENT BEFORE THE FAMILY COURT, KOTTARAKKARA IN M.C.NO.435 OF 2005.

EXT.P4:- TRUE COPY OF THE ORDER DATED 4/11/2005 PASSED BY THE FAMILY COURT, KOTTARAKKARA IN CMP.NO.689 OF 2005(a) IN M.C.NO.435 OF 2005.

[TRUE COPY]

PA TO JUDGE

R.BASANT, J

W.P.C.No.34607 of 2005

Dated this the 5th day of December 2006

O R D E R

Against the petitioner, an interim direction for payment of maintenance under Section 125 Cr.P.C has been passed by the learned Judge of the Family Court (copy of that order is produced as Ext.P4). It reads as follows:

> "Heard both sides. Considering the needs of the petitioners and income of the counter petitioner he is directed to pay Rs.700/- to P1 and Rs.500/- to P2 from the date of this CMP."

2. The grievance of the petitioner raised in this writ petition is that inspite of the fact that he had offered to maintain the wife on condition that she lives with him, the learned Judge of the Family Court had not at all adverted to that aspect. The learned counsel for the petitioner relies on Section 125(4) Cr.P.C, which extract below:

> "125(4): No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent." (emphasis supplied

3. Whether it be a claim for maintenance or interim maintenance, the Family Court is bound to consider whether the refusal of the wife to live with the husband is justified or not. A prima

facie consideration on the basis of materials available must certainly be undertaken even when the direction is to pay interim maintenance. The impugned order extracted above does not at all show that the learned Judge of the Family Court had pointedly considered this aspect of the matter.

4. It follows therefore that the direction for payment of interim maintenance in so far as it relates to the first claimant/wife cannot be supported. The same warrants interference. So far as the child is concerned, there can be no dispute and the child is entitled for interim maintenance.

5. In the result, this writ petition is allowed in part. The direction for payment of interim maintenance for the first claimant/wife is set aside. The learned Judge of the Family Court is directed to dispose of the claim of the first claimant/wife for interim maintenance afresh, in accordance with law, expeditiously - at any rate, within a period of one month from the date on which a copy of this order is placed before the learned Judge.

Hand over copy of this order to the learned counsel for the respondent.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006